

112TH CONGRESS
1ST SESSION

H. R. 1439

To regulate certain State taxation of interstate commerce, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 2011

Mr. GOODLATTE (for himself, Mr. SCOTT of Virginia, Mr. DUNCAN of South Carolina, and Ms. JACKSON LEE of Texas) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To regulate certain State taxation of interstate commerce,
and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Business Activity Tax
5 Simplification Act of 2011”.

6 **SEC. 2. MODERNIZATION OF PUBLIC LAW 86-272.**

7 (a) SOLICITATIONS WITH RESPECT TO SALES AND
8 TRANSACTIONS OF OTHER THAN TANGIBLE PERSONAL
9 PROPERTY.—Section 101 of the Act entitled “An Act re-
10 lating to the power of the States to impose net income

1 taxes on income derived from interstate commerce, and
2 authorizing studies by congressional committees of mat-
3 ters pertaining thereto”, approved September 14, 1959
4 (15 U.S.C. 381 et seq.), is amended—

5 (1) in section (a), by striking “either, or both,”
6 and inserting “any one or more”;

7 (2) in subsection (a)(1), by striking “by such
8 person” and all that follows and inserting “(which
9 are sent outside the State for approval or rejection)
10 or customers by such person, or his representative,
11 in such State for sales or transactions, which are—

12 “(A) in the case of tangible personal prop-
13 erty, filled by shipment or delivery from a point
14 outside the State; and

15 “(B) in the case of all other forms of prop-
16 erty, services, and other transactions, fulfilled
17 or distributed from a point outside the State;”;

18 (3) in subsection (a)(2), by striking the period
19 at the end and inserting a semicolon;

20 (4) in subsection (a), by adding at the end the
21 following new paragraphs:

22 “(3) the furnishing of information to customers
23 or affiliates in such State, or the coverage of events
24 or other gathering of information in such State by
25 such person, or his representative, which information

1 is used or disseminated from a point outside the
2 State; and

3 “(4) those business activities directly related to
4 such person’s potential or actual purchase of goods
5 or services within the State if the final decision to
6 purchase is made outside the State.”;

7 (5) by striking subsection (c) and inserting the
8 following new subsection:

9 “(c) For purposes of subsection (a) of this section,
10 a person shall not be considered to have engaged in busi-
11 ness activities within a State during any taxable year
12 merely—

13 “(1) by reason of sales or transactions in such
14 State, the solicitation of orders for sales or trans-
15 actions in such State, the furnishing of information
16 to customers or affiliates in such State, or the cov-
17 erage of events or other gathering of information in
18 such State, on behalf of such person by one or more
19 independent contractors;

20 “(2) by reason of the maintenance of an office
21 in such State by one or more independent contrac-
22 tors whose activities on behalf of such person in
23 such State are limited to making sales or fulfilling
24 transactions, soliciting order for sales or trans-
25 actions, the furnishing of information to customers

1 or affiliates, and/or the coverage of events or other
2 gathering of information; or

3 “(3) by reason of the furnishing of information
4 to an independent contractor by such person ancil-
5 lary to the solicitation of orders or transactions by
6 the independent contractor on behalf of such per-
7 son.”; and

8 (6) in subsection (d)(1)—

9 (A) by inserting “or fulfilling transactions”
10 after “selling”; and

11 (B) by striking “the sale of, tangible per-
12 sonal property” and inserting “a sale or trans-
13 action, furnishing information, or covering
14 events, or otherwise gathering information”.

15 (b) APPLICATION OF PROHIBITIONS TO OTHER BUSI-
16 NESS ACTIVITY TAXES.—Title I of the Act entitled “An
17 Act relating to the power of the States to impose net in-
18 come taxes on income derived from interstate commerce,
19 and authorizing studies by congressional committees of
20 matters pertaining thereto”, approved September 14,
21 1959 (15 U.S.C. 381 et seq.), is amended by adding at
22 the end the following:

23 “SEC. 105. For taxable periods beginning on or after
24 January 1, 2012, the prohibitions of section 101 that
25 apply with respect to net income taxes shall also apply

1 with respect to each other business activity tax, as defined
2 in section 5(a)(2) of the Business Activity Tax Simplifica-
3 tion Act of 2011. A State or political subdivision thereof
4 may not assess or collect any tax which by reason of this
5 section the State or political subdivision may not impose.”.

6 **SEC. 3. MINIMUM JURISDICTIONAL STANDARD FOR STATE**
7 **AND LOCAL NET INCOME TAXES AND OTHER**
8 **BUSINESS ACTIVITY TAXES.**

9 (a) IN GENERAL.—No taxing authority of a State
10 shall have power to impose, assess, or collect a net income
11 tax or other business activity tax on any person relating
12 to such person’s activities in interstate commerce unless
13 such person has a physical presence in the State during
14 the taxable period with respect to which the tax is im-
15 posed.

16 (b) REQUIREMENTS FOR PHYSICAL PRESENCE.—

17 (1) IN GENERAL.—For purposes of subsection
18 (a), a person has a physical presence in a State only
19 if such person’s business activities in the State in-
20 clude any of the following during such person’s tax-
21 able year:

22 (A) Being an individual physically in the
23 State, or assigning one or more employees to be
24 in the State.

1 (B) Using the services of an agent (exclud-
 2 ing an employee) to establish or maintain the
 3 market in the State, if such agent does not per-
 4 form business services in the State for any
 5 other person during such taxable year.

6 (C) The leasing or owning of tangible per-
 7 sonal property or of real property in the State.

8 (2) DE MINIMIS PHYSICAL PRESENCE.—For
 9 purposes of this section, the term “physical pres-
 10 ence” shall not include—

11 (A) presence in a State for less than 15
 12 days in a taxable year (or a greater number of
 13 days if provided by State law); or

14 (B) presence in a State to conduct limited
 15 or transient business activity.

16 (c) TAXABLE PERIODS NOT CONSISTING OF A
 17 YEAR.—If the taxable period for which the tax is imposed
 18 is not a year, then any requirements expressed in days
 19 for establishing physical presence under this Act shall be
 20 adjusted pro rata accordingly.

21 (d) MINIMUM JURISDICTIONAL STANDARD.—This
 22 section provides for minimum jurisdictional standards and
 23 shall not be construed to modify, affect, or supersede the
 24 authority of a State or any other provision of Federal law

1 allowing persons to conduct greater activities without the
2 imposition of tax jurisdiction.

3 (e) EXCEPTIONS.—

4 (1) DOMESTIC BUSINESS ENTITIES AND INDIVIDUALS DOMICILED IN, OR RESIDENTS OF, THE
5 STATE.—Subsection (a) does not apply with respect
6 to—
7

8 (A) a person (other than an individual)
9 that is incorporated or formed under the laws
10 of the State (or domiciled in the State) in which
11 the tax is imposed; or

12 (B) an individual who is domiciled in, or a
13 resident of, the State in which the tax is im-
14 posed.

15 (2) TAXATION OF PARTNERS AND SIMILAR PERSONS.—This section shall not be construed to modify
16 or affect any State business activity tax liability of
17 an owner or beneficiary of an entity that is a part-
18 nership, an S corporation (as defined in section
19 1361 of the Internal Revenue Code of 1986), a lim-
20 ited liability company (classified as a partnership for
21 Federal income tax purposes), a trust, an estate, or
22 any other similar entity, if the entity has a physical
23 presence in the State in which the tax is imposed.
24

1 (3) PRESERVATION OF AUTHORITY.—This sec-
2 tion shall not be construed to modify, affect, or su-
3 persede the authority of a State to enact a law and
4 bring an enforcement action under such law or exist-
5 ing law against a person or persons or an entity or
6 entities, including but not limited to related persons
7 or entities, that is or are engaged in an illegal activ-
8 ity, a sham transaction, or an actual abuse in its or
9 their business activities in order to ensure a proper
10 reflection of its or their tax liabilities, nor shall it
11 supersede the authority of a State to require com-
12 bined reporting.

13 **SEC. 4. GROUP RETURNS.**

14 If, in computing the net income tax or other business
15 activity tax liability of a person for a taxable year, the
16 net income or other economic results of affiliated persons
17 is taken into account, the portion of such combined or con-
18 solidated net income or other economic results that may
19 be subject to tax by the State shall be computed using
20 the methodology that is generally applicable to businesses
21 conducting similar business activities and, if that generally
22 applicable methodology employs an apportionment for-
23 mula, the denominator or denominators of that formula
24 shall include the aggregate factors of all persons whose
25 net income or other economic results are included in such

1 combined or consolidated net income or other economic re-
2 sults and the numerator or numerators shall include the
3 factors attributable to the state of only those persons that
4 are themselves subject to taxation by the State pursuant
5 to the provisions of this Act and subject to all other legal
6 constraints on State taxation of interstate or foreign com-
7 merce.

8 **SEC. 5. DEFINITIONS AND EFFECTIVE DATE.**

9 (a) DEFINITIONS.—For purposes of this Act:

10 (1) NET INCOME TAX.—The term “net income
11 tax” has the meaning given that term for the pur-
12 poses of the Act entitled “An Act relating to the
13 power of the States to impose net income taxes on
14 income derived from interstate commerce, and au-
15 thorizing studies by congressional committees of
16 matters pertaining thereto”, approved September
17 14, 1959 (15 U.S.C. 381 et seq.).

18 (2) OTHER BUSINESS ACTIVITY TAX.—

19 (A) IN GENERAL.—The term “other busi-
20 ness activity tax” means any tax in the nature
21 of a net income tax or tax measured by the
22 amount of, or economic results of, business or
23 related activity conducted in the State.

24 (B) EXCLUSION.—The term “other busi-
25 ness activity tax” does not include a sales tax,

1 a use tax, or a similar transaction tax, imposed
2 on the sale or acquisition of goods or services,
3 whether or not denominated a tax imposed on
4 the privilege of doing business.

5 (3) PERSON.—The term “person” has the
6 meaning given such term by section 1 of title 1 of
7 the United States Code. Each corporation that is a
8 member of a group of affiliated corporations, wheth-
9 er unitary or not, is itself a separate “person.”

10 (4) STATE.—The term “State” means any of
11 the several States, the District of Columbia, or any
12 territory or possession of the United States, or any
13 political subdivision of any of the foregoing.

14 (5) TANGIBLE PERSONAL PROPERTY.—For pur-
15 poses of section 3(b)(1)(C), the leasing or owning of
16 tangible personal property does not include the leas-
17 ing or licensing of computer software.

18 (b) EFFECTIVE DATE.—This Act shall apply with re-
19 spect to taxable periods beginning on or after January 1,
20 2012.

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